

## SECOND DIVISION

[ G.R. No. 185261, October 02, 2009 ]

### WALLEM MARITIME SERVICES, INC. AND SCANDIC SHIPMANAGEMENT LIMITED, PETITIONER, VS. ERIBERTO S. BULTRON, RESPONDENT.

#### DECISION

##### CARPIO MORALES, J.:

Wallem Maritime Services, Inc. and Scandic Shipmanagement, Ltd. (petitioners) hired Eriberto S. Bultron (respondent) on February 3, 1999 as crane operator in their vessel *MV EASTERN FALCON* for a period of twelve (12) months.

In the course of his employment, respondent developed "chronic coughs," hence, petitioners referred him to their company physician in Langkawi, Malaysia who issued a medical report dated April 6, 2000 stating, *inter alia*, that "by the nature of [respondent's] work as a seaman, he has been exposed to cement dust as his cargo ship carries cement;" and that his "Chest X-ray shows bilateral apical infiltrations of the lungs, minimal pleural effusion of the left lung and heart configuration is enlarged." Dr. Haroun thus advised petitioners to take care of him "for further management . . ."<sup>[1]</sup>

Petitioners allowed respondent to continue with his job until he was repatriated to Manila on April 29, 2000 at the expiration of his contract.<sup>[2]</sup> As respondent constantly complained of "on and off cough[ing]," petitioners referred him to the Metropolitan Hospital.

After a series of medical tests, Dr. Robert D. Lim (Dr. Lim), petitioners' medical coordinator at the Metropolitan Hospital, issued a medical report on July 28, 2000 stating that, *inter alia*, respondent "is now fit to work."<sup>[3]</sup>

Respondent refused, however, to sign the certificate of fitness for work as he felt he was still ill and suffering from disabilities.<sup>[4]</sup>

Petitioners having discontinued providing medical services and treatment, respondent consulted, at his own expense, a private physician, Dr. Juan Alejandro Legaspi (Dr. Legaspi), who diagnosed him on August 10, 2000 to be suffering from "spinal stenosis, L4-L5, L5-S1," and thus advised him to "avoid exertional activities and prolonged sitting" and to have "bed rest."<sup>[5]</sup>

Claiming, *inter alia*, that his illness has "persisted" and has "totally disabled [him] from pursuing his work as a seaman" due to petitioners' failure to provide safety measures and protective gears during his work to shield him from contracting illnesses, respondent filed a *Complaint*<sup>[6]</sup> for disability benefits and damages against

petitioners before the NLRC-NCR Arbitration Branch, Quezon City.

Petitioners resisted respondent's *Complaint*, contending that under the POEA Standard Employment Contract, he may only recover such benefits when his repatriation is due to medical reasons, not when it is due to completion of contract as in his case.

By Decision dated October 8, 2003, Labor Arbiter Felipe P. Pati found for respondent, disposing as follows:

WHEREFORE, premises all considered, judgment is hereby rendered ordering respondents [now petitioners] jointly and severally liable to:

1. pay complainant [now respondent] his proportionate disability benefits in the amount of US\$60,000.00 or its peso equivalent at the time of payment; and
2. pay complainant attorney's fees at 10% of the total monetary award to be recovered.

All other claims are dismissed for lack of merit.

SO ORDERED.<sup>[7]</sup>

After petitioners received a copy of the Labor Arbiter's Decision on November 4, 2003, they filed a *Notice of Appeal with Appeal Memorandum* via registered mail on the last day of the 10-day reglementary period of appeal or on November 14, 2003, a Friday, without the requisite appeal bond. It was only on the next business day, November 17, 2003, that they filed the appeal bond, together with another copy of petitioners' *Notice of Appeal with Appeal Memorandum*.

Respondent thus filed a *Motion to Dismiss Appeal*<sup>[8]</sup> on the ground that petitioners' appeal was filed out of time.

Explaining their failure to file their *appeal bond* on November 14, 2003, petitioners, through counsel, stated that the appeal bond "was not processed on time by the bonding company," and "was issued only on 14 November 2003 at around 4:05 PM in the office of Pioneer Insurance Corporation at Paseo de Roxas, Makati City;" and that "undersigned counsel then carried the *appeal bond*, drove his car from Makati to Manila area," but "due to extreme traffic condition, he called-up thru his mobile phone his legal assistant to file the appeal via registered mail."<sup>[9]</sup>

Petitioners thus concluded that "**there is actually no delay** inasmuch as the appeal was initiated within the ten-day reglementary period via registered mail."<sup>[10]</sup>

The National Labor Relations Commission (NLRC), by Decision<sup>[11]</sup> of March 8, 2006, denied respondent's motion to dismiss petitioners' appeal which it considered to have been effected on November 14, 2003. On the merits, it reversed the Labor Arbiter's decision and accordingly dismissed respondent's complaint, as well as petitioners' permissive counter-claims.

Respondent's *Motion for Reconsideration*<sup>[12]</sup> having been denied, he filed a petition